ICANN

July 8, 1999

The Honorable Thomas J. Bliley, Jr.
Chairman
The House Committee on Commerce
2 125 Rayburn House Office Building
Washington, D.C. 205 15

Dear Mr. Chairman:

On behalf of the Internet Corporation for Assigned Names and Numbers ("ICANN"), please find enclosed responses to the questions set forth in your letter of June 22, 1999, along with various supporting materials.

The issues raised by your letter are matters of genuine public interest that deserve the attention of this Committee. I hope that your inquiry will serve to educate and inform a broader public than is now aware of the complexities of the privatization process of which ICANN is an integral part. Unfortunately, the subject matter involved, the Domain Name System ("DNS"), is not easy for the general public to understand. As a result, the debates and discussions surrounding the attempt to create a private, non-profit entity to replace the management and funding of the DNS historically provided by the United States Government ("USG") have largely been confined to a small circle of already knowledgeable persons, many with very specific interests. Given the significance of this effort, it deserves more attention by a broader audience.

As described in more detail below, the attempt to create a global private-sector entity to serve as a vehicle for determining consensus across the Internet community, and then to manage the implementation of that consensus, is an extremely difficult task. There are no clear models to follow; global organizations today tend to be either private organizations with no requirement to produce consensus, or intergovernmental organizations formed by treaty or international agreement. ICANN, by contrast, is intended to be a non-governmental body, but also to be a vehicle that would reflect international consensus about the management of an important component of a truly global resource -- the Internet.

Thus, to a significant extent, ICANN is a great experiment, and like all experiments, it will go through a period of trial and error. ICANN is now a little over six months old, and we have already experienced both. Thus, we welcome the opportunity to share our experiences with the Committee and with the American public, in the hope that this discussion will help to make this effort more successful more quickly.

I C A N N

Ultimately, ICANN's value to the Internet community lies both in what it does (that is, substance) and how it does it (process). As to substance, if it is successful in developing and implementing consensus on DNS operational and policy issues, ICANN will help ensure the smooth and stable operation and growth of the Internet by providing a workable mechanism for oversight of a select set of key technical administrative functions: the management of the domain name and root server systems; the allocation of IP addresses; and the coordination of technical standards. In addition, there is a clear consensus in the Internet community favoring the prompt introduction and promotion of competition in the delivery of domain name services, and ICANN is charged by the Internet community with accomplishing that goal as well.

As to process, ICANN represents a new approach: non-governmental, private-sector policy-making that is open and transparent, bottom-up, consensus-based, and global in scope. This is difficult enough, but it is taking place in an environment in which the use and importance of the Internet for both personal and business use is growing exponentially. Under these circumstances, and because by definition this process is intended to move forward only on the basis of a global consensus, it is, to put it simply, a tough job. Still, despite the complexity of the task, there has been significant progress, but there are clearly substantial problems left to deal with; your inquiry provides a very helpful opportunity to describe both the progress and the problems for the benefit of the Committee and the entire Internet community.

In addition to responding to the specific questions in your letter, I thought it would be useful to describe, as a common starting point, the context in which ICANN was formed and in which it operates. There is a considerable amount of misinformation out and about, which may have generated some of the questions that the Committee has asked about our progress.

ICANN is a Consensus-Driven Organization. Most importantly, ICANN is a voluntary, consensus organization; it has no statutory authority, and no power at all that is not derivative of the level of Internet community consensus that its policies and procedures represent. It is governed by its bylaws, which were themselves developed over several months of discussion by the Internet community and represent, as the USG determined in recognizing ICANN as the privatization vehicle it had called upon the community to create, the consensus of that community. Thus, ICANN has no power or authority to impose anything on anyone, and it has not attempted to do so. ICANN is nothing more than a vehicle or forum for the development and implementation of global consensus on various policy issues related to the DNS.

Because there were at the time of **ICANN's** formation and remain today critics of either its bylaws or particular actions taken since its creation, it is useful to define what we mean when we use the word "consensus." It obviously does not mean "unanimous," nor is it intended to reflect some precise counting of heads pro or con on a particular subject, since in this environment that is simply not possible. What it does mean is that, on any particular issue, proposed policies are generated from public input and published to the world at large, comments are received and publicly discussed, and an attempt is made, from the entirety of that process, to articulate the consensus position as best it can be perceived.

Obviously, to the extent any individual or group undertakes to articulate a consensus of the overall community, its work is useful only to the extent it accurately reflects the consensus. ICANN is no exception to this rule. Unfortunately, there is no litmus test that can objectively render a judgment as to whether this standard has been met in any particular situation. Perhaps the best test is whether the community at large is comfortable with the process and the results, and the best gauge of that is probably the level of continuing participation in the process, and voluntary compliance with the policies produced by that process.

This is, necessarily, a more ambiguous standard than counting votes or some other objectively measurable criteria, and it inevitably means less efficient, more messy, less linear movement, as the perceived community consensus shifts and adapts to change, or as perceptions of that consensus themselves are refined or change. Such a process is easily subject to criticism and attack by those not satisfied with the process or the results; after all, in the absence of some objective determination, it is impossible to definitively refute claims that the consensus has been misread, and loud noise can sometimes be mistaken for broad support for any proposition advanced.

Certainly there are those who do not accept that particular ICANN policies or decisions to date accurately reflect the community consensus, and there are some who are not comfortable with the process that has been employed to determine the community consensus. No doubt reasonable people can differ on both policy and process, and certainly there are many opinions about practically everything on which ICANN has acted. Still, it appears that the process has actually worked remarkably well considering the difficulty of the task, as measured by the fact

that most of the global Internet communities continue to participate in this consensus development process.'

If ICANN were not reasonably successful as a consensus development vehicle, it would simply disappear; since it relies for its existence on voluntary compliance and cooperation by diverse parties around the world, ICANN cannot survive without broad support throughout the global Internet community. The fact that the privatization process of which ICANN is such an integral part continues to move forward, and that most of the constituent elements of the relevant community appear to support continued progress, is strong evidence that, despite the inherent ambiguity and messiness of the process, it is basically moving in the right direction.

This is certainly not to say that these efforts could not be improved; we are all learning as

---

It would take too much space to list the hundreds of individual members of the Internet community who are actively participating in the ICANN process. However, a very limited and non-exhaustive list of some of the groups and companies that have been constructively participating in the ICANN consensus-formation process demonstrates the breadth of the Internet community's involvement and commitment to make the ICANN process a success: Acend Communications; AFNIC; AfriNIC; America Online; the American Intellectual Property Law Association; the American Internet Registrants Association; Asia & Pacific Internet Association; APNIC; Association of European Brand Owners (MARQUES); Council of the Asia Pacific country code Top Level Domains (APTLD); the American Registry for Internet Numbers (ARIN); the Association for Computing Machinery (ACM); the Association of Internet Professionals; AT&T; Bell Atlantic; the Berkman Center for Internet & Society at Harvard Law School; British Telecommunications; the Center for Democracy and Technology; the Center for Global Communications (GLOCOM); Centraal Corp.; Cisco Systems; the Commercial Internet Exchange (CIX); Compaq Computer Corp.; Concentric Network Corp.; the Council of European National Top Level Domain Registries (CENTR); Deutsche Telekom; the Domain Name Rights Coalition; Dun & Bradstreet; EDUCAUSE; Electronic Commerce Europe; the Electronic Frontier Foundation; the Latin America and Caribbean Federation for Internet and Electronic Commerce (eCOM-LAC); European ISP Association (EuroISPA); European Telecommunications Standards Institute (ETSI); Foro Latinoamericano de Redes (ENRED); France Telecom; Fujitsu; Fundacion Airtel; GTE Internetworking; IBM; the Information Technology Association of America (ITAA); the International Chamber of Commerce; the International Trademark Association; the Internet Council of Registrars (CORE); the Internet Engineering Task Force (IETF); the Internet Society (ISOC); KPN; MCI Worldcom; Microsoft Corporation; the Motion Picture Association of America (MPAA); Netscape Communications Corp.; Novell; Oracle Corporation; the Organization for Economic Co-operation and Development (OECD); PSINet; RIPE; Sun Microsystems; Symantec; UUNET; Verio; World Information Technology and Services Alliance (WITSA); the World Intellectual Property Organization (WIPO); the World Wide Web Consortium (W3C).

we go. Everyone involved in this effort has made mistakes, and will probably make more as we move along. The future will hopefully be smoother than the past, but we should all realize that in this effort, as in many other difficult enterprises, the perfect is the enemy of the good.

All those involved in the management of ICANN, from the Directors to the volunteers working in its constituent bodies to its very hard-working staff, remain open to suggestions for improvement. Hopefully, the Committee's efforts and the resulting public attention that will be drawn to this complicated but exciting process will help to identify ways that this difficult job can be done better in the future.

ICANN is the Result of a Comprehensive USG Policy Development Process. In January 1998, the USG issued the "Green Paper," which was a preliminary draft of a plan for transferring management of the domain name system from the USG to the private sector. It recommended that the global Internet community create a United States-based, but globally-representative, non-profit corporation to manage the DNS. The Green Paper also outlined several other proposals, including the creation of new generic top-level domains ("gTLDs") and a competitive system of registries and registrars.

After receiving extensive comments from a wide variety of sources, ranging from individuals to foreign governments, from commercial entities to non-profit organizations, the USG issued the "White Paper," which responded to those comments by eliminating many of the suggestions relating to continued USG involvement that had been part of the Green Paper. The White Paper did, however, continue to urge the private-sector Internet community to form a global, consensus-driven, non-profit corporation to carry out DNS management and related policy functions. The White Paper outlined four guiding principles that the USG would follow, and to which the new'corporation should be committed -- **stability** (to maintain and improve the impressive record of Internet stability), **competition** (to encourage innovation, consumer choice and satisfaction, and lower costs), **private sector, bottom-up coordination** (to ensure flexibility and reflect the Internet's bottom-up traditions), and **representation** (to reflect the functional and geographic diversity of the Internet and its users, and to ensure international participation in decision-making processes).

The White Paper suggested that the new global consensus corporation it envisioned should be structured "to equitably represent the interests of IP number registries, domain name registries, domain name registrars, the technical community, Internet service providers (ISPs), and Internet users (commercial, not-for-profit, and individuals) from around the world." Finally, it suggested that it take several early actions, including: (1) "appoint, on an interim basis, an

ICANN

initial Board of Directors," which would serve "until the Board of Directors is elected and installed;" (2) "establish a system for electing a Board of Directors … that insures that the new corporation's Board of Directors reflects the geographical and functional diversity of the Internet, and is sufficiently flexible to permit evolution to reflect changes in the constituency of Internet stakeholders;" (3) "develop policies for the addition of TLDs, and establish the qualifications for domain name registries and domain name registrars within the system;" and (4) "restrict official government representation on the Board of Directors without precluding governments from participating as Internet users or in a non-voting advisory capacity."

The White Paper also committed the USG to take certain steps to "accomplish the objectives" set forth in the White Paper. These included (1) "ramp down the cooperative agreement with NSI with the objective of introducing competition into the domain name space"; (2) "enter into agreement[s] with the new corporation under which it assumes responsibility for management of the domain name space"; (3) ask the World Intellectual Property Organization (WIPO) to "convene an international process… to develop a set of recommendations for trademark/domain name dispute resolutions and other issues to be presented to the Interim Board for its consideration as soon as possible"; (4) "consult with the international community, including other interested governments"; and (5) "undertake … a review of the root server system to recommend means to increase the security and professional management of the system."

ICANN **is a Product of Internet Community Consensus.** After the issuance of the White Paper, the Internet community began discussions about the shape and nature of this new not-for-profit corporation that would manage the DNS and related functions. As this process was described in the most recent issue of the *Harvard Law Review, "In* the bottom-up, consensus-building tradition of the Internet, a broad-based coalition of Internet associations, including NSI [Network Solutions, Inc.] and the ISOC [The Internet Society], initiated a worldwide forum, the International Forum on the White Paper (IFWP), to discuss the various implementation issues left unresolved by the White Paper."' The IFWP held a series of worldwide meetings that the *Harvard Law Review* called "akin to a series of traveling constitutional conventions;"these were held in Reston (Virginia), Geneva, Singapore, and Buenos Aires. At the Geneva meeting, "a consensus emerged that distinguished individuals should govern the new corporation, and interest groups should participate in councils [now called Supporting Organizations] addressing specific issues."

---

2   *Developments — The Law of Cyberspace,* 112 Harv. L. Rev. 1574, 167 1-72 (1999).

By the end of summer 1998, the various Internet communities had come to a consensus on the structure of the new global, consensus, Internet corporation. In fact, NSI and the Internet Assigned Numbers Authority (IANA), the two USG contractors that had historically been responsible for the DNS management functions that were to be transferred to the new corporation, jointly published for public comment draft bylaws for the global consensus corporation that eventually became ICANN. Those bylaws, with minor changes, ultimately became the basis of the proposal submitted to the USG in October 1998 as the Internet community consensus response to the White Paper's challenge. Following another public notice and comment period and some modifications designed to further increase the transparency of ICANN's operations, the ICANN proposal was accepted by the USG through the signing of a Memorandum of Understanding ("MOU") with ICANN.

Simultaneously, the USG agreed (in what is known as Amendment No. 11 to its Cooperative Agreement with NSI) to extend its contractual relationship with NSI from September 30, 1998, to September 30, 2000. This extension was granted to NSI on the condition that NSI cooperate with what became ICANN, and that it begin development of a system to support new competitive registrars, separate its registry operations from its registrar operations (so as to insure that its registrar business would not have an unfair competitive advantage in interacting with its own monopoly registry business), create a searchable domain-name database, and provide technical assistance to ICANN. This approach -- to extend the existing NSI agreement -- was intended to smooth the transition to ICANN of the USG's management responsibilities. It anticipated further negotiations between NSI and the USG on various terms of the transition to competition, including the price and other terms by which all registrars would have access to the monopoly registries still operated by NSI.

The MOU between the USG and ICANN recognized ICANN as the global;not-for-profit consensus organization that the USG had, in the White Paper, called upon the Internet community to create. It also set forth a process for the anticipated transition from government to private-sector DNS management, and it restated that it expected this transition to be completed no later (and hopefully sooner) than October 1, 2000. It set forth the various areas in which the USG and ICANN would jointly work to accomplish the transition, including most importantly (1) "establishment of policy for and direction of the allocation of IP number blocks"; (2) "oversight of the operation of the authoritative root server system"; (3) "oversight of the policy for determining the circumstances under which new top level domains would be added to the root system"; and (4) "coordination of the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet." The MOU, which noted that the' parties would "abide by" the four motivating principles set forth in the White Paper, was based

on the USG's finding (set forth in the MOU) that ICANN was "the organization that best demonstrated that it can accommodate the broad and diverse interest groups that make up the Internet community."

ICANN is Not a "Regulator." As this history establishes, and its bylaws make clear, ICANN is a creation of the Internet community itself; perhaps the best analogy, although not perfect, is a private standards-setting body. It has no statutory authority, and never will; its influence derives solely from the willingness of the various participants in the Internet -- both governmental and non-governmental -- to participate in the development of its policies and abide by the results of that consensus-development process. The global Internet is a voluntary network of (mostly private) networks, and it works in large part because the participants choose to work together to make it work.

There have been, of course, a variety of governmental participants in various aspects of DNS management. For example, the initial assignment of IP addresses -- the essential building-blocks of the DNS -- was carried out by ICANN's predecessor organization IANA, along with various other technical tasks. Historically, this has been done pursuant to contracts with the USG; now that the IANA staff have been absorbed into the ICANN structure, that responsibility is ICANN's -- but without any funding support from the USG.

The management of the various global top-level domains ("gTLDs") is undertaken by various USG entities or contractors; the most relevant to this discussion is the cooperative agreement between the USG and NSI that allows NSI to operate the registries for .com, .net., .org and .edu. While this function was originally funded by the USG, for several years it has been funded by simply allowing NSI to charge the general public a fee for every domain name registered anywhere in the world; currently, that fee is a minimum of $70 per registration, and new registrations are now being created at a rate of approximately 4 million a year -- and growing rapidly.

Finally, national governments have a wide range of roles in the operation of the country-code top level domains ("ccTLDs"); for example, the .us domain is currently operated by the University of Southern California's Information Sciences Institute ("ISI") (as a subcontractor to NSI) under the direction of the USG. Thus, there are various governmental interests in the DNS, but in general, the DNS functions today as a voluntary cooperative effort of a large number of mostly private entities without significant direct USG funding.

ICANN

This is why the clear consensus of those filing comments with the USG in its policy development proceedings leading up to the White Paper was that no government should attempt to control or regulate the DNS, but instead a private-sector, voluntary management organization should be constructed. The only realistic alternative to such a private-sector approach, with something like ICANN as the consensus development and implementation vehicle, is much broader governmental involvement than now exists. Given the global character and importance of the Internet, this would almost inevitably take the form of some type of multinational governmental entity.

The process that has produced ICANN, and is now moving forward toward the completion of the ICANN structure and processes, is designed to make that multinational governmental approach unnecessary. Once fully functional, ICANN will operate along the lines of how the Internet has always functioned -- through the voluntary cooperation of large numbers of participants -- with the exception that the very informal arrangements of the past will likely be replaced with a series of consistent contractual relationships with the various relevant DNS entities: name registries and registrars, address registries, root-server operators, standards bodies, and (at least for the immediate future) the USG.

If they come into existence, these contracts will be the product of voluntary agreements; since ICANN has no governmental power, and indeed no existence outside the context of community consensus, it cannot coerce cooperation. If such a series of contracts is created, that will be both evidence of the success of this consensus-development process and a strong incentive for those who wish to benefit from connection to this network of networks to comply with ICANN policies -- which will by definition be nothing more than a reflection of community consensus. Indeed, this is the entire objective of the privatization process: to replace a mixed governmental/private informal system of management with a wholly private, global consensus management system reflected in more formal agreements between ICANN and the various DNS infrastructure and other participants.

Thus, ICANN will never be a "regulator." If it is successful in encouraging and accurately recognizing consensus, it will attract the participation of people and entities that want to see the DNS process continue to function effectively, efficiently, and fairly. The more successful this process is, the more influence ICANN's policies will have. But that is as it should be; the broader the consensus, the more powerful the influence and the more attractive the processes and organizations (like ICANN) that are part of that consensus. Thus, the only "authority" that ICANN will ever have is its attractiveness to members of the Internet community as a device for development, articulation and implementation of community consensus. Any

ICANN-

"power" that ICANN ever achieves will flow solely from the fact that it reflects the consensus views of the Internet community -- a highly desirable result, and the sole objective of those currently involved in ICANN.

I apologize for the length of this overview, but I hope it will serve as useful context in your evaluation of the progress to date in this ambitious and complex global privatization initiative. The responses to your specific questions are enclosed. Please let me know if we can provide any additional information.

Sincerely,

Esther Dyson
Interim Chairman of the Board
ICANN

Enclosures

**RESPONSE OF THE INTERNET CORPORATION
FOR ASSIGNED NAMES AND NUMBERS
TO QUESTIONS CONTAINED IN JUNE 22, 1999 LETTER
FROM CHAIRMAN TOM BLILEY TO ESTHER DYSON**

The Internet Corporation for Assigned Names and Numbers ("ICANN") is a private, non-profit corporation formed by the global Internet community to facilitate the transfer of various DNS management responsibilities from the United States Government to the private sector. It has no permanent staff, and to date has relied primarily on private donations for partial recovery of its costs. These constraints have made responding in the manner and time required by the Committee a serious challenge. Nevertheless, ICANN believes that the information and material provided here is responsive to, and fully answers, the questions posed by the Committee. All source materials referenced herein can be found at ICANN's website, www.icann.org, and are attached as Attachments 1-8 for the Committee's convenience.

The Committee's questions, along with ICANN's response, are set forth below in the order in which they were set out in the Committee's letter of June 22, with each question and response beginning on a separate page. Specific questions and responses can be found at the following pages of this Response:

I(a). Before imposing a $1 per domain name registration fee, did ICANN conduct, or have conducted on its behalf, a legal analysis of its authority to impose such a fee? If ICANN did conduct such a legal analysis, please provide all records related to the aforementioned legal analysis. If ICANN has not conducted such a legal analysis, please provide a detailed legal analysis of the source and limits of ICANN's authority to impose a $1 per domain name registration fee.

ICANN has not "imposed" any fee; it has entered into contracts with the registrars it has accredited (as required by its Memorandum of Understanding ("MOW)' with the United States Government ("USG")) for a volume-based payment designed to partially recover its costs. This may well not be the optimal procedure for ICANN cost recovery in the future, but for the reasons set forth below, it appears to be the most effective and equitable method available at this time.

Obviously, ICANN, like any non-profit body, must have a way to recover its costs. For ICANN, those costs include (1) the functions that have historically been carried out under, and funded by, USG contracts and grants, and (2) the additional costs necessary to carry out its additional responsibilities of encouraging competition, formalizing previously informal arrangements through the negotiation of contracts, and creating the global consensus-development process itself. Global outreach, contracting with diverse parties, the promotion of competition, and creation of the processes necessary to promote and encourage global consensus policies are labor-intensive and complex undertakings, and ICANN's efforts to carry out those responsibilities have incurred significant costs.

The current situation -- where ICANN incurs considerable costs but has minimal sources for recovery of those costs -- is obviously not viable over the long term. It results from a failed expectation: that all the major participants in the global Internet community would rapidly come together to make ICANN an effective vehicle for global consensus development, and to equitably share the costs of that effort. This expectation clearly underlies Amendment 11 to the Cooperative Agreement between Network Solutions, Inc. ("NSI") and the USG[2], which makes sense only on the assumption that NSI -- the dominant economic entity in the DNS -- quickly joins the rest of the global Internet community in sharing the costs of ICANN.[3] ICANN has never had any government funding, and in fact it has assumed responsibilities historically funded by the USG (such as the IANA functions) without any commitment by the USG to

---

[1]   Attachment 1.

[2]   Attachment 2.

[3]   In fact, in Amendment 11, NSI agreed to support the transition of USG DNS responsibilities to "NewCo," (now ICANN), agreed to "recognize NewCo pursuant to a contract between NSI and NewCo, and agreed that ICANN would have "the authority ... to carry out [ICANN's] responsibilities."

continue that funding. It did so because both it and the USG assumed that a permanent cost recovery mechanism, to which all the relevant DNS participants (including importantly NSI) would contribute, would quickly be put in place.

Notwithstanding the fact that such a cost recovery mechanism has yet to be created, ICANN has nevertheless attempted to carry out its global outreach responsibilities -- including meetings in Singapore and Berlin, and the next two scheduled in Santiago and Los Angeles. In addition, it has aggressively carried out the organizational and policy tasks required of it under the MOU -- encouraging and facilitating the creation of its Supporting Organizations, creating various Advisory Committees, and seeking to facilitate the development of consensus on such subjects as the introduction of competition in the .com, net, and .org domains and various intellectual property issues through publication of proposals for public comment and discussions at open meetings. None of these activities have been supported by funds from the USG or any other government.

The USG assumed that some temporary private "bridge" funding for ICANN might be necessary, but that ICANN would be able to reach quick agreements with the major participants in the DNS community, including most importantly NSI -- the only significant revenue-generating participant in the DNS as a result of its position as the only entity authorized to provide domain name services in the .com domain -- that would provide a stable source of cost recovery for ICANN. This has not happened. The Committee is free to form its own opinions as to why it has not happened, but the result is inarguable: ICANN is struggling to carry out its responsibilities without as yet any institutionalized method of cost recovery.

As a temporary solution to this problem, ICANN has relied on private donations from companies and individuals, and the willingness of many of its creditors to accept delayed collection of money due. Still, the goal should be to develop a stable funding structure which fairly and equitably distributes the costs of ICANN's consensus development and implementation activities among the various entities and segments of the Internet community that benefit from its technical coordination services.

With this background, the following describes the ICANN cost recovery structure that has just become effective on July 1. It begins with a description of the historical way in which ICANN functions provided in the past were funded and a description of the additional functions that ICANN has been required to absorb. It concludes with a discussion of the cost-recovery mechanisms currently contemplated by ICANN and the alternatives that might exist.

A. The IANA Function

ICANN has assumed financial and administrative responsibility for the Internet Assigned Numbers Authority (IANA) and its staff in Marina del Rey, California. In the earliest days of the Internet, the IANA maintained the authoritative lists of assigned domain names and numbers, under research contracts with the Defense Advanced Research Projects Agency (DARPA), a part of the U.S. Department of Defense. As the

Internet evolved and grew, the IANA continued its role as a coordinating entity, responsible for coordinating the domain name system (DNS) and the assignment of IP addresses. In addition, the IANA worked with the Internet's standards bodies and protocol developers to coordinate the assignment and publication of the Internet's technical standards.

The IANA also administers the delegation of country-code top-level domains to local managers, communicates with TLD managers on a range of issues, and supervises the resolution of disputes over delegations of registration authority when they arise. In addition, the IANA manages the .int domain, which is exclusively reserved for international treaty organizations, such as NATO.

The IANA also assigns large blocks of IP addresses to the regional IP address registries, which in turn allocate IP addresses to Internet Service Providers and others for distribution to end-users. There are currently three regional IP address registries: APNIC for the Asia-Pacific region; RIPE-NCC for Europe and North Africa; and ARIN for North and South America and sub-Saharan Africa.

The DARPA research contracts paid for the full direct and indirect costs of the IANA, including staff salaries and wages, office facilities and rent, computer equipment and network connectivity, ISI's institutional overhead, and telephone and travel expenses. These costs were assumed by ICANN as of January 1, 1999, and ICANN has received no USG funding support since that time.

B. Creation of a Competitive gTLD Registry-Registrar System

Consistent with the clear consensus of the global Internet community, and its mandate from the USG in both the White Paper and the MOU, ICANN has begun the process of determining and implementing community consensus views on how to introduce competition into the market for domain name registration services in the .com, .net, and .org generic top-level domains (gTLDs). Those services are currently provided by NSI under an exclusive Cooperative Agreement with the USG. Specifically, NSI performs two functions for those generic top-level domains: the registry and the registrar. As registry operator, NSI maintains the authoritative database of registered domain names and the IP addresses to which they correspond. As registrar, NSI interacts with customers, taking registration orders and placing registration information into the registry (the central database).

These functions in recent years[4] have been funded by a annual fee levied by NSI on every registered domain name. NSI charges a minimum of $70 ($35 per year)[5] for

---

[4]   Prior to the current arrangement, the services were funded by the USG and free to all users wherever located.

[5]   To obtain the $70 fee, registrants must supply various technical information that

(continued...)

each registration, which are required to'cover an initial registration period of two years. Thereafter, NSI charges a $35 fee for each one-year renewal of each registered domain name, even though the actual costs of renewal are obviously significantly lower than the actual costs of an original registration. These mandatory fees exceed the actual costs of providing those services; they produced revenue of almost $100 million for NSI in 1998 (nearly a 100% increase over 1997), and profits of $1 1 million (an increase of 175% over the preceding year). This performance has been rewarded by a market valuation for NSI of over $2.5 billion at this writing. Community unhappiness with the level of these fees, and the lack of choice in the services offered by NSI, have been significant elements in the creation of nearly universal demand for the introduction of competition in the provision of name registration services.

The introduction of competition into the market for registrar services will undoubtedly reduce (probably quite significantly) the cost to consumers of registering a domain name, improve customer service and generate diverse new options for Internet users. At the current level of name registrations, even just a $2 reduction in the average cost of an annual name registration would save consumers approximately than $20 million annually, and the value of improved service and increased flexibility is obviously significant. Unfortunately, the costs of implementing the transition from sole provider to competition are not trivial.

ICANN is required, pursuant to its MOU with the USG (as contemplated in Amendment 11 of the Cooperative Agreement between NSI and the USG) to accredit companies that wish to become competitive registrars in the .com, .net, and .org top-level domains. Accordingly, ICANN staff were (and are) required to draft application guidelines, review public comments and make appropriate revisions, receive and review applications on a ongoing basis, verify application information, communicate with applicants, draft and sign accreditation agreements, and assist successfully accredited applicants with what has proven to be the unexpectedly difficult process of gaining workable access to NSI's Shared Registry System. Because of the inherently legal nature of the accreditation process, ICANN's outside legal counsel is also necessarily heavily involved in this process. This process has resulted in the accreditation of five test bed registrars, and the subsequent accreditation of 52 additional registrars who are slated to begin competing in this space at the end of the test bed phase, now scheduled for July 16, 1999. The complete list of accredited registrars, which includes such organizations as AT&T, AOL, PSINet, RCN and Verio, can be found at www.icann.org and is attached at Attachment 3.

---

[5]   (…continued)
many non-commercial (and probably many commercial) registrants would not likely have available. If that information is not available to the registrant, it would have to choose the alternative fee of $119, for which NSI obtains the necessary technical information. It is likely that a large portion of those registering names with NSI choose the $119 alternative; NSI does not release a breakdown that would confirm this assumption.

The transition to a competitive registration system also requires the execution of a set of technical functions. Foremost among these is the design and management of a registration data escrow function. In order to assure the stability and uninterrupted functioning of the Internet upon the technical or business failure of a registrar, it is essential that accredited registrars escrow their essential registration data daily in a way immediately accessible to ICANN, thus allowing the data to be easily transferred or reconstructed if necessary. This backup function has historically been performed by NSI and funded through its mandatory $35/year registration fee; the similar function in a competitive environment is clearly more complex than it has been in the past, where NSI was both the registry operator and the sole registrar.

ICANN has also been working with the five accredited test bed registrars to develop a robust and reliable WHOIS service (which allows users to look up domain name registration data) for the new competitive environment with its multiple registrars. The WHOIS service was historically provided by NSI as part of its registry function, funded through its $35/year registration fee. Once it was clear that there would be movement to a competitive registrar environment, NSI decided to eliminate that service from its registry function, thus eliminating a centralized WHOIS service and creating an additional cost both for new registrars and for the consumers and business entities that had relied on that service. Today, in the absence of a centralized WHOIS service, anyone seeking contact information for a domain name must first determine which registrar has registered the name, and then seek contact information from that registrar. Since a comprehensive and complete WHOIS service is such a valuable resource for the Internet community, ICANN is working to replace that service now that it is no longer provided by NSI.

In sum, NSI's current mandatory registration fee of $35/year has historically funded NSI's registry and registrar operations, including data backup and WHOIS services. Accredited post-test bed registrars will have to similarly have to fund their operations (including data backup and WHOIS services) from whatever registration fee the market will bear, which is highly likely to be $35 or (more probably) less. In addition, they will pay NSI some fee for every domain name registered[6] that is approved by the

---

[6]   Amendment .11 requires NSI to charge a registry fee that is no more than its "costs and a reasonable return on its investment." Since NSI and the USG have been unable to come to an agreement on what that fee should be, they have temporarily agreed that NSI may charge a fee of $9 per annual registration. Since NSI has refused to accept any registrations from other registrars that are not for a period of at least two years, each registration by a competing registrar produces a payment of $18 to NSI. Noting several solicitations for the operation of these registries that have recently been submitted to the U.S. Department of Commerce, some observers have estimated that the actual cost of operating the .com, .net, and .org registries is likely to be no more than $2/year for each domain name registered. Even assuming that estimate is low by as much as 100%, it seems reasonable to expect that the fee that NSI will eventually be

(continued...)

USG for registry access, and provide their share of ICANN cost recovery at the rate of no more than $1 per domain name registered.

Even with the relatively limited amount of competition that has begun for name registrations, no accredited registrar has yet to offer services at a rate higher than the $35 charged by NSI, and thus both NSI's $9 registry fee and the $1 cost recovery fee due to ICANN are being absorbed by the registrars, not paid by users, and presumably being reflected in lower operating margins than might otherwise exist. In this sense, at least, even the minimal competition that has been introduced into the registration services market is already having a positive impact, although since NSI is not paying either fee it continues to enjoy a significant and unfair competitive advantage over all other name registration providers.

Thus, the likely result of the replacement of a situation where there is a single monopoly registrar with one where there are more than 50 competitive registrars offering name registration services will be to reduce the cost to consumers of domain name registration services, and to produce a profit margin for all registrars (including NSI) which is lower than that enjoyed today by NSI. This expected drop in registration fees itself appears likely to translate into millions of dollars of savings for Internet users, and to be far greater in the aggregate than the administrative and technical expenses incurred by ICANN in carrying out its role in helping to introduce and sustain a competitive market in registration services. In any event, those expenses will certainly be far less than the cost imposed on consumers for those services in the past, and will far exceed the contractual cost recovery fee paid by accredited registrars to ICANN.

C. Coordination of the Root Sewer System

As called for in the U.S. Government's White Paper on "The Management of Internet Names and Addresses," ICANN has entered into a Cooperative Research and Development Agreement with the USG to develop and implement improvements in the management of the root server system.[7] The root server system is a set of thirteen file servers, which each contain authoritative databases listing all TLDs. Currently, NSI operates the primary root server, which maintains the authoritative root database and replicates changes to the other root servers on a daily basis, under a contract with and the control of the USG. Different organizations around the world, including NSI and ICANN, operate the other 12 root servers.

To carry out its responsibilities under the CRADA, ICANN has established a Root Server System Advisory Committee chaired by Prof. Jun Murai, an ICANN director and the operator of the "M" root server in Japan. Though populated by volunteers, including

---

[6]   (...continued)
        permitted to charge for accessing the registries that it operates will be
        significantly lower than the $9 temporary charge that is now permitted.

        Attachment 4.

the operators of all 13 root servers, the Committee's work will entail some staff costs and expenses to be funded by ICANN. ICANN is also working with the existing root server operators on plans to enhance the already-impressive security of the present root server system, with the goal of reducing even further the risk of disruption or outside corruption of this important directory information. These various efforts, which include consideration of the structure of the root server system, the location and operation of the primary root server, and related issues, have generated ICANN staff and equipment costs, and will likely require additional costs in the future.

D. Operation of the "L" Root Server

ICANN has recently assumed responsibility (but has received no government funding) for the "L" root server, formerly operated by the University of Southern California's Information Sciences Institute ("ISI"), and previously funded by the USG through a contract with ISI. It has received no government funding for this.

E. The Process of Consensus Development and Implementation

While the substantive functions being assumed by ICANN all have roots and antecedents in the Internet's technical administrative structures, the process that ICANN was established to facilitate constitutes an unprecedented experiment in private sector consensus decision-making on a global scale. Global consensus is a difficult goal to achieve in the best of circumstances; in the contentious atmosphere that exists today, where the transition of important management responsibilities from government to private-sector mechanisms has been combined with a simultaneous effort to move from a single monopoly provider of services to a competitive market, that task is extremely complicated. To achieve a policy-making process that is open and transparent, based on Internet community consensus, bottom-up in its orientation, and globally representative has required the establishment and operation of a number of bodies, organizations, and committees through which this process can occur.

Board of Directors. ICANN's Board of Directors currently consists of ten individuals, and will be expanding in the very near future to nineteen. Though unpaid volunteers, future Directors will be entitled to reimbursement of their ICANN-related expenses, such as travel, lodging, and other costs related to attending ICANN meetings.' Board expenses also include the costs of teleconferences, written briefing materials, and staff support.

ICANN Staff. In addition to the IANA and technical staff discussed above, ICANN plans to hire a small executive staff to handle legal and policy matters, provide

---

8   Current Directors should also receive similar reimbursement, but in the absence of a permanent cost recovery mechanism, most of those expenses have not in fact been reimbursed (and in many cases, reimbursement has not yet been requested).

support to the President and Board of Directors, manage internal networks and systems, handle the corporation's financial affairs, organize meetings, foster communications with and discussions among the global Internet community, and support advisory committees and supporting organizations, as appropriate. ICANN also contemplates hiring outside consultants on specific technical and policy matters from time to time, as needed. To the extent these expenses relate to the IANA staff (such as financial accounting, payroll administration, network services, fringe benefits, employment taxes, and legal support), they represent a transfer of financial responsibility from ISI, which formerly funded this overhead through DARPA research contracts. The remainder are the additional resources needed to undertake the very significant new responsibilities required of ICANN if this experiment in private sector management is to be successful -- including global consensus development and the introduction and promotion of competition.

ICANN Meetings. If ICANN is to truly function as a global consensus-development entity, it and its processes must be accessible to the entire global Internet community. To help meet this objective, ICANN holds its periodic meetings in different regions of the world. While this is a important contribution to global access to consensus policy development, it is a significant expense to plan, organize and hold each year four three-day sequences of Board, Committee, and Supporting Organization meetings in different cities around the world, including meeting room rental and travel and lodging expenses In a further effort to make its processes available to as much of the global Internet community as possible, ICANN provides real-time broadcasts of its meetings over the Internet, including video and audio and the ability to send real-time comments and questions from anywhere in the world visible to those in the meeting room. This obviously requires significant technical facilities, which limits the number and type of meeting facilities available. In addition, enabling real-time broadcasts and online participation requires at least $25,000 per meeting for the needed equipment, high-bandwidth net connectivity, and technical staff. In addition, ICANN provides real-time scribing of its meetings projected onto large screens, to assist non-native English speakers to understand what is being said.

Advisory Committees and Supporting Organizations. ICANN has established four Advisory Committees to provide focused input: the Root Server System Advisory Committee; the Independent Review Advisory Committee; the Membership Advisory Committee (now disbanded following the production of a set of principles to guide the establishment of a membership); and the Governmental Advisory Committee. Each of these committees is populated by volunteers, but requires staff support and entails some expenses relating to teleconferences and face-to-face meetings, when necessary. ICANN's three Supporting Organizations are intended to be self-funding, but the process of establishing them has required substantial staff time.

Corporate and Office Expenses. In addition to the direct staff costs identified above, ICANN is a start-up corporation that must pay for all the usual expenses of a small business: rent, insurance, office equipment, network services, accounting, and basic legal services.

F. Possible Cost Recovery Mechanisms

As a non-profit, ICANN is required to cover its costs, but to take in no more money than is necessary to fund necessary costs and establish reasonable reserves for future expenses. The White Paper assumed that these funds would come from "domain name registries, regional IP registries, or other entities identified by the Board." Unfortunately, in a circumstance where the most significant name registry is refusing to fully participate in the development of community consensus through ICANN and indeed has now become loudly critical of ICANN's very existence after publicly supporting the creation of ICANN throughout the USG policy development process, the simplest approach -- to allocate ICANN's costs to the various registries in some appropriate way -- is not feasible.

The ICANN Board continues to believe that it is highly desirable for the name and address registries[9] to participate in the funding of the costs of consensus policy development, as part of a stable cost-recovery structure that is fair and equitable to all concerned. Nevertheless, given the current circumstances, it was clear that some alternative mechanism would need to be developed, at least for the immediate future.

As an initial matter, the largest portion of the time and energy in consensus development today is directed toward introducing and sustaining registrar competition in the .com, .net, and .org top-level domains (which are by far the largest and most profitable of the approximately 250 top-level domains, accounting for 75% of all domain name registrations). Since NSI and ICANN have been unable to reach an agreement on a contractual relationship, relying on the NSI-operated registry was not a practical option. The next best alternative source of funds was the registrars that interact with that registry.

For any funding from registries, the simplest way to allocate cost recovery would seem to be by volume. Because domain name registrations will be marketed by reaistrars in the first instance, ICANN proposed that these costs could be borne by the registrars directly, thus eliminating the registry as a conduit (and possible bottleneck) for the recovery of costs. Assuming a competitive market, the volume of registrations is some measure of the benefits that consensus coordination are providing to an individual registrar (and ultimately to users). Based on this principle, ICANN proposed that its first-year transition funding be structured on the basis of a fee to be paid by each registrar, calculated by multiplying the number of registered domain names by a variable fee equal to no more than $1 per domain per year. Because ICANN is a cost-

---

[9]   The IP Address Registries are in the process of forming the Address Supporting Organization, which (as is the case with each of ICANN's three Supporting Organizations) will elect three members of the ICANN Board once it is in existence. The three regional address registries have all indicated a willingness and intention to contract with ICANN and to provide an equitable portion of the funds needed for the recovery of ICANN's costs once the AS0 is formally recognized.

recovery non-profit entity, this variable would likely decrease over time as either or all of three likely events occurs: (i) reduction of overall costs as startup tasks are completed; (ii) the addition of new funding sources, and/or (iii) a continued increase in the number of registered domain names. In order to ensure an ongoing source of operating revenue, ICANN proposed that the fee be transmitted from the registrar on a monthly basis.

This proposed formula was posted for public comment earlier this year; it generated very little comment, and even less opposition, either in principle or on the details. Indeed, the domain name and address registry communities have expressed broad support for the principle of a fair and equitable distribution of ICANN's costs among all registries with access to the root, taking into account the variations in usage and ability to pay. Thus, it seems clear that this approach, which seems to fairly allocate the costs of consensus policy development, enjoys broad support from the Internet community, notwithstanding rhetorical attacks from some quarters.

Nevertheless, the approach described above is explicitly designed for the first full fiscal-year budget cycle of ICANN (July 1, 1999 - June 30, 2000), which takes place during the continuing organizational efforts of ICANN and during the transitional period set forth by the USG for this privatization effort. Thus, it includes some significant one-time expenses associated with that initial organizational effort, including costs that result from the inability to structure an appropriate contractual relationship with NSI. These costs will presumably not continue into the future, and thus at least to that extent ICANN's costs for consensus development should go down. In addition, if NSI were to finally decide to fully participate in the consensus-development process through ICANN, that would affect the practical options available for cost recovery. In any event, this particular cost-recovery mechanism is obviously subject to improvement or change at any time that an alternative captures consensus support. ICANN certainly welcomes any comments or suggestions on future cost-recovery mechanisms based on the principle of fair and open distribution of costs among the registries that make up the DNS.

I(b). Has ICANN conducted, or had conducted on its behalf, a legal analysis of its authority to terminate NSI's authority to register domain names? If ICANN has conducted such a legal analysis, please provide all records related to the aforementioned legal analysis. If ICANN has not conducted such a legal analysis, please provide a detailed legal analysis of the source and limits of ICANN's authority to terminate NSI's authority to register domain names.

ICANN has no statutory or regulatory "authority" of any kind. It has only the power of the consensus that it represents, and the willingness of members of the Internet community to participate in and abide by the consensus development process that is at the heart of ICANN. It is required under the MOU with the USG to accredit competitive registrars before they may access the .com, .org, and .net registries, but the effect of this accreditation is governed by Amendment 11 of the Cooperative Agreement between NSI and the USG and the USG's inherent control over the operation of these registries.

Given these facts, ICANN has undertaken no such legal analysis, nor has it had any reason to create one. If the Committee has been told that ICANN has the power to terminate NSI's authority to register domain names, or has asserted that it does, the Committee has been misinformed. To clarify this point, the following description of the process for accrediting registrars may be helpful.

From January 1, 1993, until early June 1999, domain names in the .com, .net, and .org top-level domains were registered exclusively by NSI under a Cooperative Agreement between it and the USG. As noted in the June 1998 Statement of Policy (White Paper)[10], public comments showed "widespread dissatisfaction about the absence of competition in domain name registration." Accordingly, in the White Paper the USG stated its intention to enter a "ramp down [of its] cooperative agreement with NSI [then scheduled to expire September 30, 1998] with the objective of introducing competition into the domain name space."

To implement the "ramp down," NSI and the USG negotiated Amendment 11 to NSI's cooperative agreement, by which NSI and the USG agreed to extend the agreement for a two-year period (until September 30, 2000), during which NSI agreed to revise the system for registrations in .com, .net, and .org to allow competition for registrar services. Since NSI was going to continue to be the sole administrator of the registries for .com, .net, and .org for at least two years, while simultaneously acting as one of the competitors marketing name registration services in those domains, Amendment 11 provided that a neutral body to be formed by the Internet community ("NewCo," subsequently designated by the USG as ICANN) would carry out the coordinating functions required to ensure a freely competitive registration market. In Amendment 11, NSI expressly acknowledged that NewCo "will have the authority, consistent with the provisions of the Statement of Policy and the agreement between

---

[10]   Attachment 5.

the USG and NewCo, to carry out NewCo's responsibilities." On November 25, 1998, the Department of Commerce recognized ICANN as the NewCo entity referred to in Amendment 11, and this was specifically reiterated to NSI by letter on February 26, 1999.

To achieve the White Paper's "objective of introducing competition into the domain name space," Amendment 11 provided that NSI would implement a "Shared Registration System" to "create an environment conducive to the development of robust competition among domain name registrars." The schedule agreed to by NSI and the USG provided for several phases, beginning with a "test bed" in which NSI agreed to "establish a test bed supporting actual registrations in .com, .net and .org by 5 registrars accredited by NewCo (Accredited Registrars)" and ending with a reengineering of the overall system to "assure that NSI, acting as registry, shall give all licensed Accredited Registrars (including NSI acting as registrar) equivalent access ('equal access') to registry services through the Shared Registration System."

Thus, NSI agreed in Amendment 11 that, after the introduction of competition into the registrar business, it would operate the registry to give access to, and only to, ICANN-accredited registrars (including NSI). In this way, the level playing field necessary for effective competition in a shared registry environment would be established.

In sum, ICANN neither has nor claims any "authority to terminate NSI's authority to register domain names." Instead, the requirement that NSI must be accredited by ICANN to act as a registrar after the introduction of competition, so that it operates to the extent possible (given its continuing operation of the registries for .com. .net, and .org) under the same conditions as all other competing registrars, flows directly from NSI's own agreement with the USG.

To date, NSI has not requested to be accredited by ICANN, and certain individuals purporting to speak for NSI have publicly stated that it does not intend to be accredited. ICANN has received no official communication on this issue from NSI, and stands ready to treat an accreditation application from NSI in exactly the same way it has responded to similar applications by others.

In fact, in the event NSI chooses to seek accreditation, ICANN is required by its agreement with the USG to perform its accreditation function fairly, having specifically agreed in the MOU not to "act unjustifiably or arbitrarily to injure particular persons or entities or particular categories of persons or entities." This fairness provision, which parallels provisions in Amendment 11, in ICANN's registrar accreditation policy," and ICANN's own bylaws,'* appropriately and effectively ensures against arbitrary denial of accreditation to NSI or any other registrar.

---

[11]   Section 111.0, Attachment 6.

[12]   ICANN Bylaws, Art. IV, sec. I(c), Attachment 7.

Finally, as a practical matter it is important that NSI, the most significant current provider of domain name services in the most widely used domains and the registry operator for those domains, be an active participant and contributor to the consensus development process that is ICANN. Its refusal to date to be a positive contributor to that process has increased the cost of the transition from USG to private sector management, reduced the speed with which important issues can be decided, and has made it much more difficult to move forward with what is already an extremely difficult task. No responsible participant in these processes wants to see NSI excluded from the ongoing efforts, and thus it is important to the success of this privatization effort that NSI quickly take up its appropriate role as an important contributor to the creation of community consensus.

I(c). Has ICANN conducted, or had conducted on its behalf, a legal analysis of its authority to retain intellectual property rights over registrar data? If ICANN has conducted such a legal analysis, please provide all records related to the aforementioned legal analysis. If ICANN has not conducted such a legal analysis, please provide a detailed legal analysis of the source and limits of ICANN's authority to retain intellectual property rights over registrar data.

ICANN has not sought to "retain intellectual property rights over registrar data," and thus has not had occasion to conduct a legal analysis concerning its ability to do so. ICANN's Statement of Registrar Accreditation Policy (adopted on March 4, 1999 after extensive public comment) provides that ownership of intellectual property rights in registrar data, to the extent those rights exist under law, is not "retained" by ICANN, but instead may be claimed by the registrars themselves. This treatment of intellectual property is reflected in the provisions of the accreditation agreements ICANN has entered, and stands ready to enter, with all accredited registrars.

During the process of domain-name registration, registrars collect various data typed in by registrants. This data includes the domain name itself, identifying information about the registrant, the registrant's designation of administrative, technical, zone, and billing contacts for the domain name, and technical information concerning the Internet "nameservers" that are associated with the domain name. Historically, this data has been freely available to those operating and using the Internet on a query basis through a service known as "WHOIS," to assist them in resolving problems that may arise with domain names.

Under current United States law, it is highly doubtful that collection by registrars of this factual information gives rise to any enforceable intellectual property rights. Under *Feist* Publications, Inc. v. *Rural* Telephone *Service* Co., 499 U.S. 340 (1997), copyright may not be claimed in factual information itself, but only in the selection, coordination, or arrangement of the information in a sufficiently original way. It therefore violates no copyright for others to use the registrar data for their own purposes according to their own selection, coordination, and arrangement. Similarly, because the registrar data has long been available to the public for the asking, both by Internet tradition and by U.S. Government requirements, it would not seem to be subject to legitimate claims of trade-secret rights.

Although not giving rise to intellectual-property rights under current U.S. law, registrar data may be subject to claims of intellectual property rights under the laws of other countries, or under future laws that may be enacted in this country at the state or federal level. Claims under such laws, if not accommodated to the Internet's needs, could complicate the efforts of the technical community to ensure stable and reliable operation of the Internet and the legitimate needs of the Internet user community for information about domain names. Pending proposals for extending U.S. intellectual-property law to cover databases, fortunately, take into account these special operational needs of the Internet. For example, H.R. 1858 (the Consumer and Investor Access to Information Act of 1999), which protects publishers from others who seek to compete

unfairly by copying and selling the publishers' databases, specifically excludes coverage of databases "incorporating information collected or organized ... to perform the function of addressing, routing, transmitting, or storing Internet communications ...."

The accreditation agreements entered by registrars with ICANN include provisions addressing these stability concerns. Although registrars are permitted by their agreements to claim any applicable intellectual-property rights in most types of registrar data, they provide two licenses to the data to accommodate the needs of the broader Internet community: (1) a non-exclusive worldwide license to use of the data for or on behalf of ICANN for its Internet-management purposes, such as to permit a substitute registrar to support the customer in case the original registrar goes out of business, and (2) a non-exclusive license to use the data in WHOIS services. Registrars also disclaim rights in a limited core of routing data that must be broadly copied and distributed throughout the Internet to permit the domain-name system to function properly. These limited contractual provisions ensure that the data that accredited registrars collect will be available in specific limited ways necessary to ensure the Internet's continued stable and convenient operation, but otherwise leave with the registrar any intellectual property rights that it may be able to claim in any particular jurisdiction.

I(d). Are any ICANN interim board members compensated by ICANN? For every interim board member who is compensated, please identify the interim board member in question and indicate the amount of compensation.

None of the original Initial Board Members are compensated by ICANN. Under the ICANN bylaws, the President and Chief Executive Officer of the Corporation is an ex *officio* member of the Board; because of this provision, the Interim President and CEO, Michael M. Roberts, sits on the Initial Board. Mr. Roberts is a principal with The Darwin Group, Inc., a consulting firm in which his family has a majority ownership interest. ICANN has contracted with The Darwin Group for the full-time services of Mr. Roberts and for support of the Office of the ICANN Interim President/CEO on a month-to-month basis at the rate of $18,000 per month.

In fact, far from being compensated, the members of the ICANN Initial Board (including Mr. Roberts for the last several months) are actually paying for the privilege of volunteering their services. Because the transition process has gone more slowly than expected, ICANN has until very recently had to rely on private donations as its only source of funds. Since these revenues have been far short of ICANN's actual expenses, the Initial Board members have to date forgone almost all expense reimbursement in order to leave ICANN's limited funds to pay employees and outside vendors. Many of those expenses have not even been submitted for reimbursement; as a result, the Initial Board members have been, as a practical matter, one of the important sources of funds for ICANN to date, along with donors and certain outside vendors.

I(e). Regarding ICANN's "Transition Budget for Fiscal Year 1999-2000:"
      i.   Who drafted this budget?
      ii.   How did ICANN arrive at funding levels in this budget? Please provide an explanation of the underlying rationales that served as the basis for the budget's funding levels.

The budget was prepared following the process outlined in ICANN's bylaws, which provides that the President will propose a budget to the Board for its approval. **The** budget was posted for public comment prior to the ICANN meetings in Berlin, and was described in detail at ICANN's public meeting on May 26, which was also **webcast** to a global Internet audience. No substantive recommendations for changes to the budget were received. Subsequently, the Board adopted the budget by resolution at its meeting on May 27, 1999. The full text of the budget and of the budget resolution are posted on the ICANN **website,** and included at Attachment 8.

Since ICANN is still completing many of its organizational steps as detailed above, and is still operating under its transition agreement with the Department of Commerce, the number of uncertainties surrounding the revenue and expenditure levels contained in the budget is higher than normal. As the budget document states:

> "Given the uncertain nature and outcome of many of the year's transition activities, the proposed budget is intended to provide flexible resources for staff employees, consultants and other sources of assistance. Following direction from the ICANN Board at the Singapore meeting, the budget provides for an initial contribution of $1.6 million to an operating reserve, which is intended to stabilize in the future at a minimum of one year's operating expenditures. It is likely that an operating loss will be realized at the end of the startup period in June, 1999, which will reduce the total available for the reserve. To the extent that savings are realized in any budget category in the course of the fiscal year, such amounts will be added to the reserve category at year end, thus reducing the amounts required for the reserve in future fiscal years."

The budget is designed to enable ICANN to complete the activities and tasks outlined for ICANN by the White Paper and the MOU. These are summarized in the budget as follows:

-      completion of ICANN organizational arrangements, such as the seating of the permanent members of the Board of Directors and recruiting of a permanent President and Chief Executive Officer.
-      completion of contractual arrangements with registry administrators continuing accreditation of registrars for the .com, net and .org domains

study, recommendations and implementation of policy decisions concerning domain names and trademarks resulting from the WIPO study
- study, recommendations and implementation of policy decisions concerning expansion of the Top Level Domain (TLD) name space
- study, recommendations and implementation of updated arrangements for Internet root servers
- review and adoption, after public comment and possible revision, of recommendations received from ICANN Support Organizations and Committees

The expenditure levels in the budget are derived from the corporation's program requirements, and include:

- Capital equipment purchases and Reserve contribution amounting to $5.9 million for the fiscal year, of which $4.2 million is expenditures. Within that category, the total for Executive and Staff Compensation is $1.6 million, which is composed of $1.235 million in salaries and wages and $365,000 in employment taxes and fringe benefits. The anticipated full time equivalent staffing level for the fiscal year is 14.0.

- Costs of professional and technical services agreements are projected at $1.O million for the year, or approximately $85,000 per month, which is in line with recent experience. The largest single expense within this category is for legal services. Technical services, which currently exceed $20,000 per month, are expected to decline during the year as permanent staff additions are made.

- Estimated costs of four three-day Board of Directors meetings, plus bimonthly telephone conference meetings, total $850,000. The Board, which will expand during the year to its full complement of nineteen Directors from the current ten, will continue to meet in major regions of the world in order to enable its constituents to have an opportunity to physically participate in board public forums and committee meetings. Board public forums will continue to feature video and voice distribution over the Internet.

- Staff and committee travel and meeting expenses are estimated at $450,000, including reimbursed amounts for Supporting Organizations, etc.

- Administration expense is projected at $300,000 which includes office rental and related support costs, insurance, taxes, amortization of previously purchased capital equipment, computer and network operating costs and maintenance, etc.

Provision for purchase of $100,000 of computing equipment and software to support Phase 2 of the planned computing capability for the corporation is included in this budget proposal. This amount may be adjusted upward or downward as more detailed planning proceeds based on Board decisions made during the course of the fiscal year.

Contingency amounts, provision for a prior year operating loss and a reserve contribution totaling $1.6 million are included in the proposed budget. Contingencies include programs not currently anticipated in the budget, as well as uncertainties in specific budget categories, especially legal services, due to the transition nature of ICANN's programs. It is the intention of the ICANN Board to create a reserve account of at least one year's operating expenditures, to be funded over several fiscal years.

Revenue sources that are projected to support ICANN projected expenditures and reserve requirements in the next fiscal year include:

- Total revenue for the fiscal year is budgeted at $5.9 million. Of this amount, a total of $5.0 million is projected from payments to ICANN from Registries and Registrars. An initial registrar fee schedule of $5,000 per year plus $1 per year per assigned name was adopted by the ICANN Board as part of its public comment and decision process in establishing registrar accreditation guidelines for the corn, .net and .org domains in March, 1999. This schedule will be used in FY 99-00, subject to revision based on over- or under recovery of the budgeted revenue amount in this category.

- Registrar accreditation activities in the .com, .net and .org domains are assumed to continue in the next fiscal year and are estimated to produce $100,000 in revenue, based on the current fee schedule of $1000 per application for accreditation.

- A total of $700,000 is anticipated from grants and contributions. Some of this amount reflects receipt of funds pledged during ICANN's startup period. It is also anticipated that one or more governments will make grants to ICANN to assist in support of the transition program, and a total of $400,000 has been budgeted from this source.

- The Other category includes $100,000 as an estimate of amounts received to reimburse ICANN for meeting and travel expenses incurred for Supporting Organizations and other similar activities undertaken as part of ICANN programs.

It should be noted that revenues from accreditation agreement fees will clearly not reach the projected total of $5.0 million without the participation of all registrars operating in the corn, .org and .net domains. Thus, the budget assumes the timely conclusion of current negotiations between the USG and NSI with regard to the fulfillment of the terms of Amendment 11 of the Cooperative Agreement.

I(f). What are the circumstances under which ICANN's interim board will be replaced by an elected board? Please provide a reasonable estimate of when it is anticipated that this event will take place.

The ICANN bylaws provide that its Board will consist of 19 members, from five different sources: nine At Large directors elected by a membership that is in the process of being created; three each from each of the three Supporting Organizations; and the President and CEO of ICANN, sitting ex *officio*. For the necessary elections to take place, the constituent bodies must be in existence and functioning, and most of ICANN's efforts to date have been aimed at helping to facilitate the establishment of these organizations.

We currently hope (and expect) that all of the nine Directors elected by the Supporting Organizations will be in place before the first annual meeting of ICANN on November 2-4, 1999, in Los Angeles. If this in fact takes place, half of ICANN's Board at that time will consist of Directors elected by constituent bodies of ICANN. The other half of the elected Board, which represents the At Large Directors, is currently expected to be in place no later than (and hopefully before) the second annual meeting of ICANN, which will take place in the fall of 2000. Pursuant to the White Paper and the MOU, the transition process is scheduled to be completed no later than October 1, 2000, and the Initial Directors must all have ended their service by that time.

Each of the Supporting Organizations, in the tradition of bottom-up processes, is a self-organizing entity. Since it took six months after the publication of the White Paper to organize ICANN to the point that it was recognized by the USG as the appropriate privatization vehicle, it is not surprising that it has taken about the same amount of time for the Supporting Organizations to organize themselves so that they can be officially recognized by the ICANN Board as representing community consensus and begin to function.

The Domain Names Supporting Organization ("DNSO") has been formally recognized by the ICANN Board, and is now functioning with a provisional Names Council managing its processes. Six of the seven separate constituency organizations that make up the Names Council have also been provisionally recognized, with the seventh expected soon and final recognition awaiting final proposals consistent with the principles established through the ICANN process.

The Protocol Supporting Organization ("PSO") has been provisionally recognized, with a final formal recognition awaiting a formal proposal, expected to come following the Internet Engineering Task Force meeting this month in Oslo.

The Address Supporting Organization ("ASO") has posted a draft proposal for comment, and anticipates filing a formal proposal for recognition within the very near future.

Thus, the entities that are responsible for the election of half of ICANN's Board are well along in their self-organizing efforts. There is no group of individuals more

anxious for them to complete these efforts and produce elected Board members than the current members of the Initial Board, who look forward with great eagerness to having others share with them the management challenges of a global consensus development process. The Initial Board has urged all of the SO organizers to do everything possible to complete their formation and elect the Directors for which they are responsible in time for those Directors to be seated and to participate at ICANN's first annual meeting in Los Angeles in early November.

The effort to implement the direction in the bylaws to establish an electorate to select nine At Large Directors for the ICANN Board has proved to be more difficult. One of the earliest actions of the Interim Board, on November 25, 1998, was to ask for volunteers from the community at large to participate in the Membership Advisory Committee ("MAC") mandated by the ICANN bylaws. Over 80 expressions of interest were received, and 10 volunteers were selected, with special attention being given to ensure geographical diversity and a range of practical experience. The membership consisted of the following people:

> Izumi Aizu (Asia Network Research; Asia & Pacific Internet Association; Malaysia/Japan);
> Diane Cabell (Fausett, Gaeta & Lund, LLP; United States);
> George Conrades, Chairman (ICANN; United States);
> Greg Crew (ICANN; Australia);
> Pavan Duggal (Cyberlaw Consultant; India);
> Kanchana Kanchanasut (Asian Institute of Technology; Thailand);
> Daniel Kaplan (Consultant; Internet Society France; France);
> Siegfried Langenbach (CSL GmbH; Germany);
> Nii Quaynor (Network Computer Systems; Ghana);
> Oscar Robles Garay (Latin American & Caribbean Networks Forum/ENRED; Mexico);
> Dan Steinberg (Open Root Server Confederation; Canada); and
> Tadao Takahashi (Internet Society Brazil; Brazil).

In addition, Jonathan Zittrain served as non-voting liaison to the Berkman Center membership study that was conducted at the request of the ICANN Board for the benefit of the MAC in its deliberations.

The MAC undertook to come up with recommendations to the Interim Board on the establishment of the necessary electorate. It worked intensely for several months, with most of its deliberations and meetings fully available to the public, and it received and evaluated a great number of recommendations from a variety of sources. Finally, on May 5, 1999, it provided its report to the Board, consisting of 17 principles that it thought should guide the establishment of the At Large electorate. Those principles were immediately published for public comment, and subsequently discussed at ICANN's open meeting in Berlin on May 26. The Board then accepted, with gratitude for its hard work, the output of the MAC, and instructed staff and counsel to evaluate how an At Large electorate could best be implemented. The staff advice will be

published in time for public comment prior to the next scheduled Board meeting in late August.

As the MAC recognized, the establishment of a representative global electorate to produce half the Directors of an entity that is responsible for the consensus management of important global resources requiring both technical and policy coordination is a very complex task. If the appropriate universe of persons is considered to be all those who might be directly affected by the results of the ICANN consensus development process, this may include several hundred million people. If, on the other hand, the appropriate universe is only those persons who are knowledgeable and sufficiently interested to actively participate and stay informed on the issues with which ICANN is involved, this is likely to be a very small group of people that may not be at all representative of Internet users as a group, and who may well have private agendas that are at least partially responsible for their willingness to stay involved. The former group is clearly too large to operate as an effective electorate in this context, and the latter presents special risks of capture of half the ICANN Board by a determined minority -- whether it be of commercial interests, political interests, or for that matter any cohesive group. It certainly is not out of the question that a particular religious or ethnic minority, for example, might see the potential capture of a controlling (or at least blocking) position in an entity that has global responsibilities over an important part of the Internet as an attractive proposition worth pursuing.

Thus, the MAC struggled with how to balance the various elements of creating such an electorate -- the desire to empower as many interested and affected people as possible, with due regard to cultural, geographic and economic diversity -- with the risks that the electorate might not accomplish its stated purpose: to provide a voice for the users of the DNS in the consensus development activities of ICANN that might not be available in any other way. It ultimately concluded that the risks of error were so significant here, and the difficulty of recovery from a mistaken approach so great -- after all, is it likely that any group that successfully captured a significant number of At Large Director's seats would voluntarily give them up? -- that the At Large elections should be preceded by an outreach effort in an attempt to produce an electorate that at least minimized the possibility of capture by a determined minority. The consensus of the MAC was that an electorate of 5,000, while not eliminating that risk, would at least ameliorate it, and was not so large that it was an impractical goal. Indeed,_ if 5,000 persons interested in participating in the election of half the ICANN Board cannot be located from around the world, that fact would at least raise some questions about the workability of this particular mechanism for user input.

In addition, the MAC recommended that the election of At Large Directors be undertaken in at least two tranches, so that the experience of the first effort could be used to adjust the process for the remaining elections to the extent necessary to increase the odds of a broadly representative electorate. Finally, the MAC recommended a variety of steps to minimize the risk of outright fraud.

The Board largely accepted these recommendations, and referred them to staff and counsel for advice on how such a process could best be implemented. However, it

is obvious that there is one severe impediment to proceeding as the MAC has recommended -- the lack of funds to undertake either the outreach probably necessary to produce 5,000 members of an electorate, or the election itself, if it is to be anything more than a simple counting of unconfirmed e-mail ballots. Any efforts to minimize fraud will result in costs that ICANN currently has no ability to pay. Thus, while the Board expects to receive reports from its staff in time for public comment prior to the meeting in Santiago in late August, unless and until additional funding sources are forthcoming it will be difficult to implement any such program for At Large elections.

If funds do become available, it seems likely that the Board will accept the MAC's recommendation to hold these elections in at least two **tranches,** with a number of Initial Board members equal to those elected leaving the Board upon those elections. The first election could conceivably begin soon, depending on the requirements for the size of the electorate prior to any elections and the success of any necessary outreach effort.

The Board continues to feel that it should move cautiously on this issue, given the very important consequences for the future success of the consensus development process through ICANN. Users of the DNS should obviously have a way to participate in the ICANN processes, but it would be inconsistent with the goal of those processes to create a system where those claiming to represent users could carry out private agendas that might be intentionally adverse to the creation of a true consensus.

There are obviously individuals and groups in the world whose goal is to disrupt the orderly operation of systems like the DNS; the recent hacker attack on an NSI server is a good example. It would be a total abdication of the responsibility that the Initial Board has accepted, and clearly not consistent with any consensus position of the Internet community, to create an At Large Director electorate that does not actually represent the legitimate interests of the users of the DNS. Those who have been critical of the speed at which this extremely difficult task has been undertaken do not, with all due respect, appear to appreciate either the complexities or the long-term importance to the consensus development process of this effort.

In sum, the efforts to produce a fully-elected ICANN Board have moved forward as expeditiously as could reasonably be expected. By the time of its first annual meeting, half of the elected Board members should be seated and active, and we currently anticipate that the other half will be seated and active no later than the end of the transition process contemplated by the White Paper. Given the difficulties involved, and the critical importance of getting it right, this seems to be an acceptable pace. It is ICANN's impression that the majority of the Internet community agrees with both this analysis and the conclusions that flow from it, but the Committee can obviously test this impression by seeking input from the full range of participants.

2. A **detailed explanation of ICANN's decision to deny the general public access to portions of its meetings and the meetings of its supporting organizations.**

In fact, all of the results of the ICANN decision-making process, and much of the actual decision-making, are fully accessible to the general public No significant policy matter can be considered by the Board without prior public notice and consideration of public comments. The Board has in its first two quarterly meetings (in Singapore and Berlin) divided its three-day meetings into a public discussion of the Board agenda, complete with reports from staff and others on the matters scheduled for discussion and the opportunity for public comment and Board interaction; a subsequent private Board discussion of those same agenda items; and a public press conference, open to all, where the Board explains its decisions and answers questions. Thus, the only activities that have not been fully available to the general public have been those Board meetings, in person and telephonically, when staff is providing advice to the Board and responding to its questions; any actions taken on those occasions are immediately made public, along with the underlying rationale for the decision.

The criticism from some that ICANN is not sufficiently accountable because its Board and staff engage in non-public conversations, therefore, seems vastly overblown. The notion that there should not be any private interaction between a decision-making body and its staff, which is what this criticism amounts to, would surprise most observers, probably including this Committee and its staff. Obviously, like most public bodies, the Congress operates in a highly visible mode, but this does not preclude the private interaction between committees and their staff which is necessary to effective operations. Similar private interaction between the ICANN Board and its staff likewise does not mean that the ICANN process is not an open one, as the combination of required public notice and comment before any action and immediate announcement of actions and their rationale demonstrates. Indeed, since ICANN "decisions" are nothing more than the recognition of community consensus, and require voluntary compliance by a large number of independent actors to have any effect at all, the notion that there is some "secret" process that has any significance simply makes no sense in this context.

Still, this issue clearly is important -- probably as much to many of the critics as a matter of principle as for its practical implications -- to a certain portion of the Internet community. The Board would obviously like to take whatever reasonable steps it could to allow the finite energy of the Board and all the other participants in this process to concentrate on consensus policy development, rather than this issue. Therefore, it will continue to experiment with different combinations of public and private sessions in its next meeting in Santiago, with the goal of trying to properly balance the desire for full transparency with the need to continue to more forward effectively with the complex coordination tasks it has been handed.

3. A detailed explanation of ICANN's decision to seek authority solely over generic Top Level Domains ("TLDs"), and not over country code TLDs, many of which are commercial in nature and accept registration by all individuals.

ICANN has made no such decision. In fact, outside of various preliminary discussions with NSI that have not proven fruitful, ICANN has not engaged in any meaningful discussions or negotiations with any TLD registries, whether gTLDs or ccTLDs. The only actions that ICANN has undertaken to date are those which are specified in the White Paper and the MOU, and specifically those designed to introduce and facilitate competition for registration services in the .com, .net and .org domains, which are by far the most significant commercial domains.

It would obviously be desirable at some point to have contractual relationships with both gTLD and ccTLD registries, but given ICANN's extremely limited resources, that issue is on the "to do" list, not the "front burner" list. Of course, if and when ICANN is able to turn to the issue of contracts with the registries, any such relationships will only result from the voluntary agreement of the registry operators to participate in and abide by the consensus development process that is ICANN.

In response to a NSI suggestion, and because the Board viewed it as an idea that had some merit, ICANN did post for comments the question of whether, instead of DNSO constituencies for "gTLDs" and "ccTLDs," there should instead be constituencies for "open" TLDs (those allowing registrations by anyone) and "closed" TLDs (those placing geographic or other restrictions on who could register a name in those registries). The clear consensus of the responses was that this was not a desirable approach at this time, and the Board has taken no further action on this issue. It is an issue that is under consideration by the Government Advisory Committee. Given that fact, and given ICANN's extremely limited resources, it has focused on the specific immediate tasks set forth in the White Paper and MOU, and will return to this issue at some appropriate time in the future.

4. **A detailed summary from each ICANN interim board member recounting the sequence of events that preceded the person's acceptance of membership on ICANN's interim board. This summary should include, but not be limited to, answers to the following questions:**

    a.   **Who contacted the interim board member regarding the possibility of serving on ICANN's interim board?**

    b.   **Who extended the invitation for membership on the interim board to the interim board member in question?**

    c.   **To whom did the interim board member report his or her acceptance of the aforementioned invitation?**

    d.   **Please provide all records related to the consideration and selection of each interim board member.**

The details of the contacts with each Director are summarized below. To provide some context: As part of the creation of the consensus structure that eventually became ICANN, there was considerable discussion about how this new entity would be managed. Since it was, by definition, intended to be a **global** consensus entity, it was understood by all that its management should be globally diverse. While there was considerable discussion about how the permanent Board should be constituted, it was generally understood that the Initial Board members would have to be produced by the same consensus process that was to create the new entity itself.

In fact, that is what happened. Simultaneously with the effort to develop a consensus organization, the entire Internet community was invited to propose people who would be suitable as Initial Board members. At first, the general view seemed to be that the Initial Board should represent the various stakeholders in the process -- those groups or coalitions that were separately identified and had a specific interest to advance. It quickly became clear that it was not going to be easy -- and perhaps impossible -- to come to a consensus using this approach, in part because the various stakeholders showed no propensity for coming to consensus on their particular representative, and in part because it was difficult to perceive a consensus on which stakeholder groups should be represented on the Initial Board. The focus then changed to finding what were referred to as "luminaries" -- people of outstanding credentials and reputations who had not been engaged in the debates and whom the Internet community would recognize and support as both qualified and neutral.

The Initial Board as it now stands is the result of that latter effort, which was engaged in by numerous people around the world. In addition to volunteered proposals, Jon Postel and IANA affirmatively sought out recommendations from the full range of participants in the debate, including NSI. A number of people who seemed to be attractive candidates were approached in various ways and declined to be considered; others who were recommended seemed inappropriate for a variety of reasons. After considerable discussion, the current roster of Initial Board members was finally reached. The original suggestions of those people who ultimately came to serve on the Initial Board came from private individuals, business organizations, trade

associations, and officials of various governmental organizations. The final decisions on who would be invited were made by Jon Postel, after considering all the advice and recommendations received and coming to a judgment that this group of individuals was likely to receive consensus support from the Internet community. The official invitations were issued on behalf of Dr. Postel by his counsel.

With that preamble, the following summarizes the details of the contacts that each individual director experienced:

1. Geraldine Capdeboscq

Ms. Capdeboscq, who is the executive vice president of the Group Bull (a French computer company) in charge of its strategy, technology, and partnerships, was first contacted in September, 1998, by a representative of the French Ministry of Finance and Industry, asking whether she would be available to **serve** on the board of a new international corporation to oversee Internet addresses.

She indicated that, while she was an Internet user, she had not been following or even aware of the discussions on the creation of such a corporation. She was told the objective for the Initial Board was to find qualified individuals who had not previously been actively involved, but were interested, in Internet development. She indicated her **willingness to** participate in principle, and was then contacted by an official of the **European** Commission, who asked her to indicate her willingness to be considered to **Jon Postel** (through his counsel), which she did. She understood that it was not clear that she would in fact be formally asked to participate, since the consideration of the structure of the Initial Board was still in process.

She became aware that she had been chosen as a member of the Initial Board when she was contacted by Jon Postel's counsel to arrange the details of a meeting of proposed Initial Board members near New York City, during which meeting the Initial Board was first constituted.

2. George **H. Conrades**

Sometime last fall, Mr. Conrades received a call on his car phone from John Patrick, whom he knew from working together at IBM. Mr. Patrick asked him if he was familiar with IANA and the effort to form a new private sector entity to take over those responsibilities. Mr. Conrades said he was aware of the effort. Mr. Patrick then told him that his name had been suggested as a possible initial director of the entity, and asked if he would be interested; Mr. Patrick said that the Global Internet Project was supporting this effort, and that Mr. Conrades' background and experience in the industry, combined with the fact that he was no longer associated with any company, made him a particularly good choice as a knowledgeable but neutral candidate. He then suggested that Mr. Conrades call Roger Cochetti for more details, which he did, and he subsequently agreed to let his name be submitted to the USG. He then received a call from the counsel to Jon Postel, who confirmed that his name would be submitted and discussed dates for an initial meeting, which was held in October.

3. Gregory L. Crew

Mr. Crew is the Chairman of the Australian Communications Industry Forum (ACIF), an industry body established to manage the process of industry self-regulation through the development of appropriate codes and standards. At some point in the Green Paper/White Paper process, he was contacted by a representative of the Australian National Office for the Information Economy (NOIE), who sought his advice on ACIF's processes as a potential guide to the structure and processes of the new body (NewCo) being discussed to serve as a private sector substitute for the historical government management of various functions. In addition, he was asked if he would be prepared to stand as an initial director of NewCo should it be established. He agreed in principle, subject to further details.

Mr. Crew's name had been submitted as a possible candidate for an ICANN Director by both the NOIE and at least one Australian private sector member, based on personal contact with him in his role as Chairman of ACIF. In September 1998, he was contacted by counsel to Jon Postel, by telephone, to confirm his willingness to stand as a director of ICANN, and he agreed to do so. Subsequently, he was invited, and during October attended, a meeting of proposed initial directors of ICANN near New York City.

4. Esther Dyson, Interim Chairman

Ms. Dyson originally discussed this subject separately with Ira Magaziner and Roger Cochetti in late summer 1998. Both told her of the impending formation of a new organization to manage certain aspects of domain name policy, and asked her if she would have any interest in serving on the board of such an entity. She said she would be interested. In mid-September, she received an e-mail from counsel for Jon Postel, asking her to serve on the board; since she did not know this person, she contacted Roger Cochetti to ask him if this was legitimate. He told her it was, and she subsequently agreed to be included on the list of proposed board members submitted to the USG. She then attended a meeting in October, at which the Board was officially constituted and she was elected Interim Chairman.

5. Frank Fitzsimmons

Mr. Fitzsimmons was first contacted by another Dun & Bradstreet employee, who told him about the effort to create a private sector organization to assume certain Internet management functions. He was told that his background and experience on Internet and electronic commerce issues made him a potentially attractive candidate for the initial board of this new entity. He suggested that other D&B personnel working for him might be more knowledgeable, but was told that senior-level people were being sought. It was suggested that Mr. Fitzsimmons call the counsel for Jon Postel to get more information, which he did. After learning more about the effort, he agreed to be considered, and after clearing this with his senior management and legal staff, agreed to have his name included in the proposal to be submitted to the Commerce Department.

6. Hans Kraaijenbrink

Sometime in mid-1998, he received a telephone call from an official of the European Commission, asking whether he would be available to serve on the Board of a new international corporation to oversee certain parameters of the Internet. The fact that he had not previously been involved in these issues was explained to him as a positive instead of a negative point, since it meant that he would approach the issues with an open mind. He was also told that his experience as the Chair of the Executive Board of the Association of the European Telecommunications Network Operators (ETNO) was one of the reasons that he had been approached, since it demonstrated his capacity to serve effectively on the board of international organizations.

After consultation with and approval by the Executive Board of ETNO and his employer Royal KPN N.V., he indicated his willingness to be considered. He was subsequently contacted by counsel for Jon Postel to inform him of his selection to the Initial Board and to arrange the practical details of a meeting of all such Initial Board members, which took place in the New York area in late October, 1998.

7. **Jun Murai**

Mr. Murai was contacted by Jon Postel at either an IETF or ISOC meeting, who asked him if he would have any interest in serving on the initial board of the private sector successor to IANA. He then received either a phone call or an email from Jon Postel's counsel asking him if he was agreeable to having his name submitted to the Department of Commerce. He agreed.

8. **Eugenio Triana**

Mr. Triana was originally suggested as a possible candidate by various Europeans who were aware that he would, on September 1, 1998, be leaving his post with the European Commission. Sometime after that time, he was asked by various people who participate in European and Spanish associations dealing with information technology and telecommunications whether he would be interested in serving on the board of a new non-profit organization intended to have some Internet management responsibilities. He agreed to be considered. Sometime after that, toward the end of September, he received a communication from counsel to Jon Postel, providing further information and asking if he would agree to be proposed as part of the Initial Board, which he did. He subsequently attended the organizational meeting of the Initial Board in October.

9. Linda S. Wilson

Ms. Wilson was first contacted by Professor Larry Landwebber of the University of Wisconsin. He informed her of the planning underway to create a non-profit organization to manage various technical aspects of the Internet, and told her that exploration had begun for potential candidates to serve on an initial board that would serve for a short period of time to get the process started. He said that her name had

surfaced from several sources as someone who might be interested and willing, and that the President of the University of Wisconsin (where Ms. Wilson received her PhD) has encouraged him to contact her. She was interested because of prior experience in shaping new and reinvented organizations, because of interest in the Internet, and because it seemed to be a valuable public service. She did indicate, however, that she had a complex year ahead of her in her role as President of Radcliffe College, and that the timing and commitment would be very relevant factors.

She was contacted again (she believes in early September) by either Landwebber or Mike Roberts, who told her that progress was being made, and asked again if she would be willing to serve. She said she was interested but still concerned about the level of commitment required given her other obligations. Subsequently, she was contacted by counsel for Jon Postel, who asked for a current resume. Finally, Jon Postel's counsel contacted her once again, with a request that she allow her name to be formally proposed in a filing with the Department of Commerce. She agreed, with the understanding that she was agreeing to serve on the Board.

10. Michael M. Roberts

The other member of the Initial Board is Michael M. Roberts, ICANN's Interim President and Chief Executive Officer, who serves ex *officio*. Mr. Roberts was first contacted in the early fall by counsel to Jon Postel, who asked him if he would be willing to be considered for the post of the Interim CEO of ICANN. After some discussion of why he might be suited for that position -- including importantly his experience with the issues and his immediate availability -- and being told that it would probably be only a short-term assignment (perhaps a few months), Mr. Roberts agreed to be considered. **He** was then invited to attend a meeting of the Initial Board in October, where he was extensively interviewed by the Board and then excused from the room so his candidacy could be discussed. He was then told that the Board, after consideration of several alternatives, had voted to offer him the position, with the details of the employment arrangements to be negotiated between him and the Interim Chairman. He serves at the pleasure of the Board pursuant to a month-to-month contract.

5. All executed registrar accreditation agreements and related records.

Responsive materials will be submitted under separate cover.

6. Records of all communications (whether written, electronic or oral) between ICANN (or its agents or representatives) and the Executive branch of the Federal government (or its agents or representatives, including but not limited to the Executive Office of the President), including but not limited to all records relating to such communications, regarding:

   a. **Negotiations or other discussions regarding the transfer of control of the root system to ICANN or an ICANN-affiliated entity;**

   b. **Negotiations or other discussions regarding future agreements relating to the DNS between ICANN and the Department of Commerce (excluding records of communications provided in response to request 6.a. above);**

   c. **The terms of ICANN's registrar accreditation agreement, including but not limited to the imposition of the $1 per domain name registration fee;**

   d. **Termination or alteration of the Department of Commerce's cooperative agreement with NSI; and**

   e. **Attempts to persuade or force NSI into entering a registrar accreditation agreement with ICANN, or NSI's refusal to enter into the aforementioned agreement.**

Responsive materials will be submitted under separate cover.

7. All records relating to funding ICANN has solicited or received from:

      a.   **For-profit entities;**
      b.   **Not-for-profit entities; and**
      c.   **Individuals.**

Responsive materials will be submitted under separate cover.

When ICANN was officially recognized by the USG (through the signing of the MOU) as the global, consensus, non-profit organization that the White Paper had called upon the Internet community to produce, both parties assumed that the organizational process could move ahead expeditiously, and that a permanent cost-recovery mechanism would be in place in the foreseeable future. In fact, the organizational process has been both more complex and slower than was anticipated, and a regularized cost-recovery funding mechanism has just this month become effective. Since the largest registrar has so far refused to become accredited, however, and thus is not yet participating in the cost recovery process, the current cost recovery program will not likely cover ICANN's ongoing costs.

In order to bridge the period between its creation and the operation of a regularized cost recovery mechanism, ICANN solicited, and various individuals and entities volunteered, donations that would be used to cover this transition period. The Global Internet Project undertook to lead a fund-raising effort on behalf of ICANN throughout the business community, and ICANN officers and Directors encouraged donations at every appropriate opportunity.

The result of all of these efforts was a total of $421,510 in donations; the amount of each donation and the identity of the donor are recorded on Attachment 9 to this response.

Unfortunately, in significant part because of the longer time and greater costs of the transition period, as described elsewhere in this response, the amount of donations has not kept pace with expenses, so that ICANN is currently in a significant negative net worth position. Its total revenues are significantly exceeded by its total expenses; the accounts payable consist in significant part of professional services.

ICANN is now beginning to receive some funds for cost recovery from direct participants in the DNS. It has received approximately $110,000 in application and accreditation fees from registrars, and beginning July 1, 1999, it is accruing fees from accredited registrars pursuant to the cost recovery funding mechanism described earlier in this response. Nevertheless, until a resolution of the current impasse with NSI, ICANN will continue to rely on donations and the willingness of its creditors to forego immediate payment for the bulk of its funding. This is obviously not a viable long-term situation; if the ICANN mechanism for consensus policy development is to be successful, it must begin to receive a more regular flow of funds to recover its continuing costs.

8. All records relating to the proceedings of any meeting of ICANN's interim board, or any of ICANN's supporting organizations, to which the general public has been denied access.

There have been 10 meetings of ICANN's Initial Board, and two meetings of its Executive Committee; the minutes of all of those meetings have been posted on the ICANN web site and will be provided under separate cover. There have only been two meetings of the provisional Names Council of the Domain Names Supporting Organization; the minutes and other documents relating to those materials are not in the physical possession of ICANN, but are available on the Names Council web site at www.dnso.org and have been reproduced from that site and provided with this response.

July 8, 1999